



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345-3525-02]

RIN 0648-BC41

Snapper-Grouper Fishery off the Southern Atlantic States;  
Regulatory Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in a regulatory amendment (Regulatory Amendment 13) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule revises the annual catch limits (ACLs), including sector ACLs, for 37 snapper-grouper species based on updated landings data. The purpose of this rule is to ensure that the ACLs are based on the best scientific information available, and to prevent unnecessary negative socio-economic impacts to participants in the snapper-grouper fishery and fishing community that could occur if the ACLs are not revised, in accordance with the

provisions set forth in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement, may be obtained from the Southeast Regional Office Web site at

<http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta Southeast Regional Office, NMFS, telephone: 727-824-5305, or e-mail: [Nikhil.Mehta@noaa.gov](mailto:Nikhil.Mehta@noaa.gov).

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP and includes 60 species, 37 of which are addressed in Regulatory Amendment 13 and this final rule. These 37 snapper-grouper species do not have stock assessments; their acceptable biological catch estimates (ABCs) are greater than zero; and their ABCs were specified using a formula established in the Comprehensive ACL Amendment. Species in the fishery management unit with stock assessments and species with an ABC equal to zero are not addressed in Regulatory Amendment 13. For assessed species, adjustments to landings data will be made during assessment updates or

revisions. Species with an ABC of zero are prohibited harvest species and are outside the scope of the amendment. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On March 21, 2013, NMFS published a proposed rule for the regulatory amendment and requested public comments (78 FR 17336). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

The purpose of this rule and Regulatory Amendment 13 is to revise the ABCs, ACLs (including sector ACLs) and annual catch targets (ACTs) implemented by the South Atlantic Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) using improved data. If the ABCs, ACLs (including sector ACLs), and ACTs are not updated using the new data, there could be a disconnect between how the ACLs were calculated and how the landings are calculated to determine if ACLs are met and AMs are triggered.

#### Management Measures Contained in this Final Rule

This final rule revises ACLs for the following species and species complexes: deep-water complex species (yellowedge grouper, blueline tilefish, silk snapper, misty grouper, sand tilefish, queen snapper, black snapper, and blackfin snapper); shallow-water groupers (red hind, rock hind, yellowmouth

grouper, yellowfin grouper, coney, and graysby); snappers (gray snapper, lane snapper, cubera snapper, dog snapper, and mahogany snapper), jacks (almaco jack, banded rudderfish, and lesser amberjack), grunts (white grunt, sailor's choice, tomtate, and margate); porgies (jolthead porgy, knobbed porgy, saucereye porgy, scup, and whitebone porgy); Atlantic spadefish; blue runner; bar jack; gray triggerfish; scamp; and hogfish. NMFS monitors landings throughout a fishing season to ensure they do not exceed the ACLs. Because the ACLs trigger the AMs that were established in the Comprehensive ACL Amendment it is important that data used to calculate the ACLs is consistent with the data used to monitor landings.

The commercial AMs for the species and species complexes in this final rule specify that if the commercial ACL for a species or species complex is reached or projected to be reached during a fishing year, the sector will close for the remainder of that fishing year for that species or species complex. If a complex is closed, sale and purchase of any species in that complex is prohibited. If a species, or a single member of a species complex, is designated as overfished and the commercial ACL is exceeded, then during the following fishing year the commercial sector ACL would be reduced by the amount of the commercial ACL overage in the prior fishing year.

The recreational AMs for the species and species complexes

are as follows: if the recreational ACL is exceeded for a species or species complex in a fishing year, then during the next fishing year the NMFS Regional Administrator will monitor the recreational landings for a persistence in increased landings, and will reduce the length of the recreational fishing season as necessary to ensure the recreational landings do not exceed the recreational ACL.

This final rule ensures that the methodology used to calculate the ACLs is consistent with the methodology used to monitor landings and to determine when it is necessary to trigger the AMs.

#### Additional Measures Contained in Regulatory Amendment 13

In addition to the ACL revisions in this final rule, Regulatory Amendment 13 revises the ABCs and ACTs for these 37 snapper-grouper species using the improved data methods as previously described.

#### Comments and Responses

A total of 16 comment submissions were received on the proposed rule for Regulatory Amendment 13. Comments were received from individuals, an environmental organization, a recreational fishing association, and a Federal agency. Of the comments received, some were generally opposed to any regulations, and others were supportive of the action in the regulatory amendment. There were also comments outside the

scope of this rulemaking. Several of those questioned the species groupings and the formula used to establish the ACLs, which were actions included in the South Atlantic Comprehensive ACL Amendment and are not reconsidered in Regulatory Amendment 13. Specific comments related to the actions contained in Regulatory Amendment 13 and NMFS' responses are summarized below.

Comment 1: NMFS states in Regulatory Amendment 13 that the "best scientific information available" is used. Provide the legal definition of the term "best scientific information available" and the timeline for the revision of National Standard 2.

Response: National Standard 2 requires that "conservation and management measures shall be based upon the best scientific information available," 16 U.S.C. 1851(a)(2). The Magnuson-Stevens Act does not define the phrase "best scientific information available" but NMFS has published National Standard 2 guidelines to provide guidance on how this phrase should be interpreted in the development of fishery management actions. See 50 CFR 600.315. On December 9, 2009, NMFS published a proposed rule that would revise the National Standard 2 Guidelines (74 FR 65724). NMFS is reviewing the comments received on the proposed rule and expects to publish a final rule in the near future.

Comment 2: Regulatory Amendment 13 results in allocations that favor the recreational sector more than the commercial sector.

Response: NMFS disagrees. Sector allocations were established by a formula selected by the Council in the Comprehensive ACL Amendment in 2012. Regulatory Amendment 13 did not consider modifications to the allocation formula but uses updated data, including MRIP data, to revise the ABCs, ACLs, and ACTs for 37 snapper-grouper species. The use of updated data changes the percentage of allocations for these species but as shown in Table 2.2 of Regulatory Amendment 13, the differences are generally small and do not favor one sector over the other.

#### Changes from the Proposed Rule

On April 17, 2013, NMFS published in the Federal Register an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, the South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text; it does not change the specific regulatory requirements that were contained in the proposed rule.

Therefore, as a result of this reorganization, the ACLs previously located at § 622.49 are now located at § 622.193.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule and regulatory amendment are necessary for the conservation and management of the snapper-grouper fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. No changes to the final rule were made in response to public comments. As a result, a regulatory flexibility analysis was not required and none was prepared.



List of Subjects in 50 CFR Part 622

ACLs, Fisheries, Fishing, Snapper-Grouper, South Atlantic.

Dated: June 11, 2013

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
performing the functions and duties of the  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.193, the first sentence in each of paragraphs (h) (1) (i), (h) (2), (i) (1) (i), (i) (2), (j) (1) (i), (j) (2), (l) (1) (i), (l) (2), (m) (1) (i), (m) (2), (p) (1) (i), (p) (2), (q) (1) (i), (q) (2), (s) (1) (i), (s) (2), (t) (1) (i), (t) (2), (u) (1) (i), (u) (2), (w) (1) (i), (w) (2), (x) (1) (i), and (x) (2) are revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 376,469 lb (170,763 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 334,556 lb (151,752 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to

reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) If commercial landings for scamp, as estimated by the SRD, reach or are projected to reach the commercial ACL of 333,100 lb (151,092 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for scamp, as estimated by the SRD, exceed the recreational ACL of 176,688 lb (80,144 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(j) \* \* \*

(1) \* \* \*

(i) If commercial landings for other SASWG, as estimated by

the SRD, reach or are projected to reach the commercial ACL of 49,776 lb (22,578 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for other SASWG, as estimated by the SRD, exceed the recreational ACL of 46,656 lb (21,163 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

\* \* \* \* \*

(1) \* \* \*

(1) \* \* \*

(i) If commercial landings for lesser amberjack, almaco jack, and banded rudderfish, combined, as estimated by the SRD, reach or are projected to reach their combined commercial ACL of 189,422 lb (85,920 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the

fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for the complex (lesser amberjack, almaco jack, and banded rudderfish), combined, as estimated by the SRD, exceed the recreational ACL of 267,799 lb (121,472 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(m) \* \* \*

(1) \* \* \*

(i) If commercial landings for bar jack, as estimated by the SRD, reach or are projected to reach the commercial ACL of 5,265 lb (2,388 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for bar jack, as estimated by the SRD, exceed the recreational ACL of 19,515 lb (8,852 kg), round weight, then during the following fishing

year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

\* \* \* \* \*

(p) \* \* \*

(1) \* \* \*

(i) If commercial landings combined for this other snappers complex, as estimated by the SRD, reach or are projected to reach the combined complex commercial ACL of 215,662 lb (97,823 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If the combined recreational landings for this snappers complex, as estimated by the SRD, exceed the recreational ACL of 728,577 lb (330,477 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure

recreational landings do not exceed the recreational ACL for this complex in the following fishing year. \* \* \*

(q) \* \* \*

(1) \* \* \*

(i) If commercial landings for gray triggerfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 272,880 lb (123,776 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for gray triggerfish, as estimated by the SRD, exceed the recreational ACL of 353,638 lb (160,407 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

\* \* \* \* \*

(s) \* \* \*

(1) \* \* \*

(i) If commercial landings for blue runner, as estimated by

the SRD, reach or are projected to reach the commercial ACL of 177,506 lb (80,515 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for blue runner, as estimated by the SRD, exceed the recreational ACL of 948,223 lb (430,107 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(t) \* \* \*

(1) \* \* \*

(i) If commercial landings for Atlantic spadefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 35,108 lb (15,925 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*



(2) \* \* \* If recreational landings for Atlantic spadefish, as estimated by the SRD, exceed the recreational ACL of 154,352 lb (70,013 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

(u) \* \* \*

(1) \* \* \*

(i) If commercial landings for hogfish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 49,469 lb (22,439 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for hogfish, as estimated by the SRD, exceed the recreational ACL of 85,355 lb (38,716 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce

the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

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(w) \* \* \*

(1) \* \* \*

(i) If commercial landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 36,348 lb (16,487 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for jolthead porgy, knobbed porgy, whitebone porgy, scup, and saucereye porgy, combined, as estimated by the SRD, exceed the recreational ACL of 106,914 lb (48,495 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL

in the following fishing year. \* \* \*

(x) \* \* \*

(1) \* \* \*

(i) If commercial landings for white grunt, sailor's choice, tomtate, and margate, combined, as estimated by the SRD, reach or are projected to reach the commercial complex ACL of 218,539 lb (99,128 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. \* \* \*

\* \* \* \* \*

(2) \* \* \* If recreational landings for white grunt, sailor's choice, tomtate, and margate, as estimated by the SRD, exceed the recreational ACL of 588,113 lb (266,764 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season for this complex by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. \* \* \*

